

Environmental Protection Agency

§ 80.611

(i) This prohibition begins December 1, 2007 in the areas specified in § 80.510(g)(1) and (g)(2), except as specified in paragraph (e)(2)(ii) of this section.

(ii) This prohibition begins December 1, 2010 in the area specified in § 80.510(g)(2) for NRLM diesel fuel that is produced in accordance with a compliance plan approved under § 80.554.

(iii) This prohibition begins December 1, 2010 in all other areas.

(3) Introduce, or permit the introduction of, fuel into any nonroad diesel engine (other than locomotive and marine diesel engines) that does not comply with the applicable standards, dye and marking requirements of § 80.510(b) and (e) beginning on the following dates:

(i) This prohibition begins December 1, 2010 in the areas specified in § 80.510(g)(1) and (g)(2), except as specified paragraph (e)(3)(ii) of this section.

(ii) This prohibition begins December 1, 2014 in the area specified in § 80.510(g)(2) for NRLM diesel fuel that is produced in accordance with a compliance plan approved under § 80.554.

(iii) This prohibition begins beginning December 1, 2014 in all other areas.

(4) Introduce, or permit the introduction of, fuel into any locomotive and marine diesel engine which does not comply with the applicable standards, dye and marking requirements of § 80.510(c) and § 80.510(f) in the following areas beginning on the following dates:

(i) This prohibition begins December 1, 2012 in the areas specified in § 80.510(g)(1) and (g)(2), except as specified in paragraph (e)(4)(ii) of this section.

(ii) This prohibition does not apply in the area specified in § 80.510(g)(2) for NRLM diesel fuel that is produced in accordance with a compliance plan approved under § 80.554.

(iii) This prohibition does not apply in any other areas.

(5) Introduce, or permit the introduction of, fuel into any model year 2011 or later nonroad diesel engine certified for use on 15 ppm sulfur content fuel, diesel fuel which does not comply with the applicable standards, dye and marking requirements of § 80.510(b) through (f).

(f) *Cause another party to violate.* Cause another person to commit an act in violation of paragraphs (a) through (e) of this section.

(g) *Cause violating fuel or additive to be in the distribution system.* Cause motor vehicle diesel fuel, or NRLM diesel fuel, to be in the diesel fuel distribution system which does not comply with the applicable standard, dye or marker requirements or the product segregation requirements of this Subpart I, or cause any diesel fuel additive to be in the diesel fuel additive distribution system which does not comply with the applicable sulfur standards under § 80.521.

§ 80.611 What evidence may be used to determine compliance with the prohibitions and requirements of this subpart and liability for violations of this subpart?

(a) *Compliance with sulfur, cetane, and aromatics standards.* Compliance with the standards in §§ 80.520, 80.521, and 80.522 shall be determined based on the level of the applicable component or parameter, using the sampling methodologies specified in § 80.330(b), as applicable, and the appropriate testing methodologies specified in § 80.580(a)(2) for sulfur, or one of the alternative methodologies for sulfur as approved under § 80.580(a)(3); § 80.2(w) for cetane index; and § 80.2(z) for aromatic content. Any evidence or information, including the exclusive use of such evidence or information, may be used to establish the level of the applicable component or parameter in the diesel fuel or additive, or motor oil to be used in diesel fuel, if the evidence or information is relevant to whether that level would have been in compliance with the standard if the regulatory sampling and testing methodology had been correctly performed. Such evidence may be obtained from any source or location and may include, but is not limited to, test results using methods other than the compliance methods in this paragraph (a), business records, and commercial documents.

(b) *Compliance with other requirements.* Determination of compliance with the requirements of this subpart other than the standards described in paragraph (a) of this section and in §§ 80.520, 80.521, and 80.522, and determination of liability for any violation of this subpart, may be based on information obtained from any source or location. Such information may include, but is not limited to, business records and commercial documents.

EFFECTIVE DATE NOTE: At 69 FR 39204, June 29, 2004, § 80.611 was revised, effective Aug. 30, 2004. For the convenience of the user, the revised text is set forth as follows:

§ 80.611 What evidence may be used to determine compliance with the prohibitions and requirements of this subpart and liability for violations of this subpart?

(a) *Compliance with sulfur, cetane, and aromatics standards, dye and marker requirements.* Compliance with the standards, dye, and

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marker requirements in §§80.510, 80.511, 80.520, and 80.521 shall be determined based on the level of the applicable component or parameter, using the sampling methodologies specified in §80.330(b), as applicable, and an approved testing methodology under the provisions of §§80.580 through 80.586 for sulfur; §80.2(w) for cetane index; §80.2(z) for aromatic content; and §80.582 for fuel marker. Any evidence or information, including the exclusive use of such evidence or information, may be used to establish the level of the applicable component or parameter in the diesel fuel or additive, or motor oil to be used in diesel fuel, if the evidence or information is relevant to whether that level would have been in compliance with the standard if the regulatory sampling and testing methodology had been correctly performed. Such evidence may be obtained from any source or location and may include, but is not limited to, test results using methods other than the compliance methods in this paragraph (a), business records, and commercial documents.

(b) *Compliance with other requirements.* Determination of compliance with the requirements and prohibitions of this subpart other than the standards described in paragraph (a) of this section and in §§80.510, 80.511, 80.520, and 80.521, and determination of liability for any violation of this subpart, may be based on information obtained from any source or location. Such information may include, but is not limited to, business records and commercial documents.

§ 80.612 Who is liable for violations of this subpart?

(a) *Persons liable for violations of prohibited acts.*—(1) *Standard, dye, additives, motor oil, and introduction violations.* (i) Any refiner, importer, distributor, reseller, carrier, retailer, or wholesale purchaser-consumer who owned, leased, operated, controlled or supervised a facility where a violation of §80.610(a) through (d) occurred, or any other person who violates §80.610(a) through (d), is deemed liable for the applicable violation.

(ii) Any person who causes another person to violate §80.610(a) through (d) is liable for a violation of §80.610(e).

(iii) Any refiner, importer, distributor, reseller, carrier, retailer, or wholesale purchaser-consumer who produced, imported, sold, offered for sale, dispensed, supplied, offered to supply, stored, transported, or caused the transportation or storage of, motor vehicle diesel fuel that violates

§80.610(a), is deemed in violation of §80.610(e).

(iv) Any person who produced, imported, sold, offered for sale, dispensed, supplied, offered to supply, stored, transported, or caused the transportation or storage of a motor vehicle diesel fuel additive which is used in motor vehicle diesel fuel that is found to violate §80.610(a), is deemed in violation of §80.610(e).

(2) *Cause violating motor vehicle diesel fuel or additive to be in the distribution system.* Any refiner, importer, distributor, reseller, carrier, retailer, or wholesale purchaser-consumer or any other person who owned, leased, operated, controlled or supervised a facility from which motor vehicle diesel fuel or additive was released into the motor vehicle diesel fuel or additive distribution system which does not comply with the applicable standards or dye requirements of §80.520 or §80.521, is deemed in violation of §80.610(f).

(3) *Branded refiner/importer liability.* Any refiner or importer whose corporate, trade, or brand name, or whose marketing subsidiary's corporate, trade, or brand name appeared at a facility where a violation of §80.610(a) occurred, is deemed in violation of §80.610(a).

(4) *Carrier causation.* In order for a motor vehicle diesel fuel or motor vehicle diesel fuel additive carrier to be liable under paragraph (a)(1)(ii), (iii) or (iv) of this section, as applicable, EPA must demonstrate, by reasonably specific showing by direct or circumstantial evidence, that the carrier caused the violation.

(5) *Parent corporation.* Any parent corporation is liable for any violations of this subpart that are committed by any subsidiary.

(6) *Joint venture.* Each partner to a joint venture is jointly and severally liable for any violation of this subpart that occurs at the joint venture facility or is committed by the joint venture operation.

(b) *Persons liable for failure to comply with other provisions of this subpart.* Any person who:

(1) Fails to comply with the requirements of a provision of this subpart not